

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Third Periodic Review of the	)	MB Docket No. 07-91
Commission's Rules and Policies	)	
Affecting the Conversion	)	
To Digital Television	)	

To: Secretary, FCC

**COMMENTS**

Rocky Mountain Public Broadcasting Network, Inc. ("RMPBN"), by its attorneys, provides these comments in response to the *Notice of Proposed Rulemaking* in the referenced docket, FCC 07-70 (released May 18, 2007) ("*NPRM*").

RMPBN applauds the FCC's determination to have a strong DTV system in place across the country on the February 17, 2009 digital transition deadline, and it fully supports that goal. However, RMPBN urges the FCC to exercise its discretion under the law establishing the transition deadline to provide substantially more flexibility and accommodation to stations regarding the process and timing of their achieving their "ultimate" or "final" DTV transmission facilities.

Specifically, with respect to RMPBN's five noncommercial educational stations comprising the public television network in Colorado, despite RMPBN's very substantial, costly and good faith efforts to fully implement every aspect of the DTV transition process, there are as described below a myriad of issues still outstanding relating to transmitter sites and transmission facilities that have been

or can be placed into operation by the deadline or thereafter, and these issues need to be acknowledged and accommodated.

## **BACKGROUND**

RMPBN is the licensee of five public television stations in Colorado – KRMA-TV/DT in Denver (which serves as the flagship station and origination point for RMPBN's network programming which is relayed to and carried on the other stations as well as 26 translator stations licensed to RMPBN and numerous others licensed to third parties), KTSC(TV)/DT in Pueblo, KRMJ(TV)/DT in Grand Junction, KRMU-DT in Durango, and, by acquisition that has just closed, KMAS-TV/DT in Steamboat Springs. These are PBS member stations, broadcasting a wide variety of high-quality news, public affairs, informational, educational and entertainment programming, including children's programming, throughout Colorado.

### Station KRMA-TV/DT, Denver

Station KRMA-TV operates on NTSC Channel \*6 from its long-time site on Lookout Mountain. As the Commission is well aware, the placement of DTV facilities on Lookout Mountain has been the subject of massive legal and political disputes, and RMPBN, finding itself incapable of continuing to pay the costs for that legal and political struggle, long ago abandoned the notion of constructing KRMA-DT on Lookout Mountain. Instead, RMPBN has focused on obtaining the

best possible coverage from an alternative site on Mt. Morrison. In the meantime, until a few days ago, KRMA-DT operated on Channel \*18 under an STA from the rooftop of a building in downtown Denver. RMPBN has also had a CP for KRMA-DT on an existing tower site “ice bridge” at Mt. Morrison (BMPEDT-20061205AAG), and it just completed the construction of those facilities, beginning program tests on August 2, 2007, and filing its license application (File No. BLEDT-20070806AED) on August 6, 2007. However, because of additional legal disputes over zoning for what is hoped ultimately to be a new tower at Mt. Morrison, RMPBN does not foresee the possibility of constructing facilities that might be deemed its “full” or “final” DTV facilities by the transition deadline.<sup>1</sup>

The facilities that RMPBN will have in place for KRMA-DT by the transition deadline will be those specified in the construction permit and now just completed – Channel \*18 operating from Mt. Morrison with 115 kW ERP and HAAT of 331 m, using an antenna identified by the FCC as 76810. These facilities are entirely different from those specified in the just adopted DTV Table of Allotments, which were based on RMPBN’s original DTV build-out plan of returning to its analog Channel \*6 at the Lookout Mountain site. At this point, there is no chance that

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<sup>1</sup> Because of the unique circumstances here, RMPBN sought a “use it or lose it” waiver with respect to KRMA-DT, but as a result of the existence of the outstanding construction permit for the Mt. Morrison ice bridge facilities, the FCC’s *Order*, FCC 07-90 (released May 18, 2007), dismissed the request for a waiver on the grounds that the “use it or lose it” deadline would automatically extend through any extension of the CP. In a companion *Order*, FCC 07-91 (released May 18, 2007), the FCC granted RMPBN a construction permit extension for KRMA-DT until 30 days following the Effective Date of the rules to be adopted in this proceeding. Even though RMPBN has proceeded with construction under the extended construction permit, RMPBN interprets the Commission’s decisions in these two *Orders* as extending the “use it or lose it” deadline until 30 days following the Effective Date of the rules to be adopted here. If RMPBN’s interpretation of the FCC’s intent is not correct, RMPBN hereby requests a continuing waiver of the “use it or lose it” deadline for RMPBN for the reasons specified in these comments, and a further opportunity to address these issues as appropriate.

KRMA-DT will ever end up back on Lookout Mountain, and thus no relationship between the facilities specified for KRMA-DT in the DTV Table (coordinates, ERP, HAAT or antenna pattern) and those that will ever be built – whether they are the hopefully temporary “ice bridge” facilities specified in the construction permit and now completed or anticipated future facilities that might be placed on a tower on Mt. Morrison. Similarly, given that the FCC’s and RMPBN’s original replication expectations for KRMA-DT were based on its returning to Channel \*6 at Lookout Mountain, and the fact that KRMA-DT will of necessity be located on Channel \*18 at Mt. Morrison, which makes it impossible to entirely duplicate KRMA-TV analog coverage, RMPBN will likely never achieve “replication” as originally contemplated by RMPBN and the FCC.

#### Station KTSC(TV)/DT, Pueblo

Station KTSC (TV) on Channel \*8 operates from a tower located on Cheyenne Mountain. RMPBN currently operates KTSC-DT on Channel \*26 from the same location with licensed facilities of 39 kW ERP and 657 m HAAT. RMPBN elected to go back to its analog Channel \*8 as the permanent channel for KTSC-DT and currently anticipates that, by the transition deadline, it will be able to operate on Channel \*8 using the same antenna currently used for KTSC(TV).

However, in comparing the KTSC facilities with those specified in the Final DTV Table, RMPBN sees a number of discrepancies:

-- the coordinates are 1 second off in latitude (the licensed KTSC(TV) and KTSC-DT operations being at 38-44-43 NL, 104-51-39 WL, while the DTV Table shows 38-44-44 NL, 104-51-39 WL);

-- there is a 7 meter discrepancy in HAAT (the licensed KTSC(TV) antenna center of radiation being at 720 m while the DTV Table places it at 727 m); and

-- the antenna IDs are different (licensed KTSC(TV) being Antenna ID 32868 while the DTV table specifies Antenna ID 74992, even though RMPBN plans to use the same antenna for the permanent DTV station).

Moreover, as the FCC may recall, RMPBN moved the KTSC(TV) facilities to Cheyenne Mountain from Baculite Mesa in 2001 following RMPBN's taking over the station from the University of Southern Colorado. This was done out of an effort to improve the station's coverage. Unfortunately, it now has become clear to RMPBN that the cost of operating KTSC from Cheyenne Mountain is not worth the coverage gains actually obtained, and that it might make sense to move KTSC-DT back to Baculite Mesa, perhaps even by the transition deadline. The result would be somewhat smaller coverage for the station, but it would probably still achieve "replication" as the original replication facilities for KTSC-DT were based on the original Baculite Mesa transmission site for KTSC(TV) that was in use when the original interim table of DTV allotments was created. Obviously, if KTSC-DT is moved back to Baculite Mesa, the facilities specified in the Final DTV Table would have no relation to those actually in service, even if the discrepancies noted above are addressed.

Station KRMJ(TV)/DT, Grand Junction

Station KRMJ(TV) operates on Channel \*18 from a tower located at the Black Bridge site. RMPBN currently operates KRMJ-DT on Channel \*17 from the same location with licensed facilities of 17.7 kW ERP and 409 m HAAT. RMPBN elected to go back to its analog Channel \*18 as the permanent channel for KRMJ-DT and currently anticipates that, by the transition deadline, it will be able to operate on Channel \*18 using the same antenna currently in use for the combined KRMJ(TV)/KRMJ-DT operation.

However, because RMPBN relocated KRMJ(TV) in early 2006 from its original Grand Mesa site to the Black Bridge site, and also constructed KRMJ-DT at that site, both pursuant to appropriate FCC authorizations, and because the DTV Table is apparently based on operating parameters at the original Grand Mesa site, there parameters specified in the DTV Table for KRMJ-DT are entirely different from the parameters reflected in the Channel \*18 operation at the transition deadline. Moreover, although KRMJ-DT comfortably has satisfied the 80% replication requirement under the FCC's use it or lose it policies applicable to stations not currently operating on their permanent DTV channels, the ultimate KRMJ-DT facilities on Channel \*18 at the Black Bridge site will likely never be able to achieve 100% replication as calculated by the FCC's method. However, the reality is that the actual facilities for both KRMJ(TV) and KRMJ-DT serve more population, under Longley-Rice calculations, than could be served by equivalent facilities at the Grand Mesa site..

#### Station KRMU-DT, Durango

RMPBN was originally authorized to operate KRMU(TV) as a new analog noncommercial educational television station on Channel \*20 at Durango. RMPBN subsequently applied for and received authorization in 2004 to build out the station as a digital-only station. KRMU-DT was constructed and began operations later that year. It is currently licensed with ERP of 12.6 kW and 130 m HAAT.

RMPBN contemplates that it would simply carry on with these facilities at the end of the transition, or perhaps with such power increase that might be possible utilizing the existing KRMU-DT equipment. The Final DTV Table specifies facilities that are identical to those currently in operation at KRMU-DT, except for ERP, which is stated to be 46 kW. RMPBN has confirmed that it is possible to operate the as-built DTV facilities at KRMJ-DT with that power (45 kW). However, RMPBN believes that operation at that power level may result in adverse environmental considerations (in the form of Rf radiation exposure). If the power of KRMJ-DT does indeed have to be limited due to Rf radiation concerns, some accommodation will need to be made for the discrepancy in ERP in the DTV Table.

#### KMAS-TV/DT, Steamboat Springs

The FCC recently approved the donation of a failing commercial television station KMAS-TV/DT in Steamboat Springs, from NBC Telemundo License Co. to RMPBN (See File No. BALCT-20061121A). RMPBN has an application on file for the conversion of that station from commercial to noncommercial educational status (BMLET-20070208ABN).

RMPBN has just taken over the station, which it intends to operate as another satellite station of KRMA-TV/DT, providing service to a relatively remote and sparsely populated area otherwise not receiving an off-air public TV service.

Station KMAS-TV operates on Channel 24; Station KMAS-DT is authorized on Channel 10 with facilities that line up with the DTV Table except in one respect – the antenna ID number of the outstanding construction permit is 73298, while the antenna ID number in the DTV Table is 44199. RMPBN understands that facilities for KMAS-DT have been installed at the transmission site, but may not actually be operational at this time. The operation of this station will have to be confirmed as RMPBN is able to do so, but if in fact KMAS-DT has been built with an antenna that is not precisely the same as that specified in the DTV Table, RMPBN is unlikely to be able to replace it by the transition deadline.

## **COMMENTS**

**I. The FCC should be flexible in the process for and timing of construction of final DTV facilities, and accommodating of Stations that have had or may have to modify their facilities.**

RMPBN strongly urges the FCC to exercise its discretion under the Digital Television and Public Safety Act of 2005, Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006), which established the February 17, 2009 digital transition deadline, by providing substantial flexibility to stations regarding the process for and timing of their achieving their “ultimate” or “final” DTV transmission facilities. The FCC should also be as accommodating as possible to stations that have had to relocate or otherwise modify their DTV facilities as



compared to what might have been contemplated at earlier stages of the process, or which may need to do so prior to the transition deadline.

As the FCC can see from the description above of RMPBN's digital facilities, RMPBN has two stations now built that have been built at transmitter sites other than those that were in service for analog transmissions when the original DTV allotments were created, and RMPBN may need to relocate a third station from its existing DTV transmitter site to another site prior to the transition deadline. There are a variety of discrepancies between what is or can be in place by the transition deadline and the allotment parameters specified by the Final DTV Table arising out of those site changes, as well as other discrepancies.

Thus, RMPBN urges the FCC to be as flexible as the law allows, focusing on identifying and addressing ways to facilitate a smooth transition in February of 2009, and facilitating each station's own path and timing in achieving its final DTV facilities.

**II. The FCC should not require stations to construct facilities that precisely match the facilities specified in the Table of DTV Allotments.**

In paragraph 67 of the *NPRM*, the FCC suggests that stations will need to get construction permits for, and then construct and license DTV facilities that precisely match the facilities specified in the DTV Table of Allotments, all to be accomplished by the transition deadline at the latest.

As noted, RMPBN's DTV stations exist with multiple discrepancies as compared to the DTV Table, despite the fact that all its DTV facilities were

approved by the FCC in response to construction permit application. RMPBN does not believe that the FCC can or should require every station's permanent DTV facilities to match precisely those facilities specified in the DTV Table. In addition, RMPBN does not believe that, at this point, the FCC should not specify a requirement that all stations apply for such facilities now, or a deadline for when they have to achieve them.

Noncommercial educational licensees such as RMPBN have accomplished much in the DTV transition process to date, in many cases overcoming considerable obstacles to be on the air at all. In the case of RMPBN, there is simply no chance for a general re-build of DTV facilities throughout its network to match DTV Table parameters, even if were actually possible to do so. The FCC must find some way of accommodating this reality.

## **CONCLUSION**

RMPBN urges the FCC to adopt flexible rules consistent with the comments above.

Respectfully submitted,

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